IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 352 (MS) OF 2006

Manoj Kumar, S/o Sri Rajendra Kumar Agrawal, R/o Gandhi Nagar, P.O. Bazpur, Distt. Udham Singh Nagar.

.....Petitioner.

Versus

1. The State Transport Appellate Tribuna, Dehradun, through its Chairman.
2. The Regional Transport Authority, Kusum Khera, P.O. Haldwani, District Nainital.
3. Sri Sabir Hussain, S/o Sri Nasir Ahmad,
   R/o Indira Nagar, P.O. Haldwani, Distt. Nainital.
4. Smt. Mamta Sharma, W/o Sri Prem Kumar Sharma, R/o Kesowala, P.O. Bazpur, Distt. Udham Singh Nagar.
5. Smt. Shamimunnisa, W/o Sri Asraful Haq, R/o Azad Nagar, Line No. 17, P.O. Haldwani, Distt. Nainital.
6. Sri Prem Kumar Sharma, S/o Sri B.C. Sharma, R/o Kesowala, P.O. Bazpur, Distt. Udham Singh Nagar.
7. Sri Faisal Shamsi, S/o Sri Abdul Rehman, R/o Khatyari, P.O. Ramnagar, Distt. Nainital.
8. Smt. Savitri Devi, W/o Sri Urvadutt Joshi, R/o Haripur Nayak, Kusum Khera, P.O. Haldwani, Distt. Nainital.
9. Sri Urvadutt Joshi, S/o Sri Bhawani Dutt Joshi, R/o Dayal Vihar, Haripur Nayak, Kusum Khera, P.O. Haldwani.
10. Sri Iqbal Hussain, S/o Sri Ahmad Hussain, R/o Gandhi Colony, P.O. Rudrapur, Distt. Udham Singh Nagar.
11. Sri Avaneet Singh, S/o Sri Inder Jeet Singh, R/o Ranikhet Road, P.O. Ramnagar, Distt. Nainital.

12. Sri Mohd. Suhail, S/o Sri Iqbal Hussain, R/o Gandhi Colony, P.O. Rudrapur (Udham Singh Nagar).
13. Sri Ravindra Kumar Sharma, S/o Sri Shital Ram Sharma, R/o Pipalia, P.O. Bazpur, Distt. Udham Singh Nagar.
14. Sri Rishi Raj Tyagi, S/o Sri Raghunath Singh, R/o Ganga Sadan, Saket, P.O. Haldwani, Distt. Nainital.
15. Sri Sunil Kumar Nanda, S/o Sri Satpal Nanda, R/o Ganga Sadan, Saket, P.O. Haldwani, Distt. Nainital.
16. Sri Jeevan Kumar, S/o Sri Balwant Ram, R/o Main Road, P.O. Bazpur, Distt. Udham Singh Nagar.
17. Sri Laxman Singh Karki, S/o Sri Guman singh Karki, R/o Haripur Nayak, Haldwani, Distt. Nainital.
18. Sri Pawan Kumar, S/o Sri Jagir Singh, R/o Mundia Mani, P.O. Bazpur, Distt. Udham Singh Nagar.
19. Smt. Sudhesh Rani, W/o Sri Pawan Kumar, Mani Mundia, P.O. Bazpur, Distt. Udham Singh Nagar.
20. Sri Dileep Chandra Sharma, S/o Sri Arjun Das, R/o Mundia Kalan, P.O. Kashipur, Distt. Nainital.
21. Sri Mahandi Khan, S/o Sri Ramzani, R/o Sultanpur Patti, P.O. Bazpur, Distt. Udham Singh Nagar.
22. Sri Tara Singh Bisht, S/o Sri Godhan Singh Bisht, R/o Gunipur, Lama Chor, Haldwani, Distt. Nainital
23. Sri Ravindra Singh, S/o Sri Rajendra Singh, R/o Tanda Mallu, P.O. Ramnagar.
24. Sri Mohd. Imran, S/o Sri Mohd. Gufran, R/o Khatyari, P.O. Ramnagar.
25. Nazma, D/o late Shafiq Ahmad, R/o Line No. 17, P.O. Haldwani.
26. Sri Bahadur Singh Bisht, S/o Sri P.S. Bisht, R/o Kapil Bhawan, P.O. Kathgodam, Haldwani, Distt. Nainital.

27. Sri Laxman Singh Lamgadia, S/o Sri Moti Singh, R/o Parwatiya Mohalla, Rampur Road, P.O. Haldwani.
28. Sri Gopal Singh Gangola, S/o Sri Bhim Singh Gangola, R/o Jwala Pokhari, Daulatpur, Golapur, Nainital.
29. Sri Mahendra Singh Bisht, S/o Prem Singh, R/o Kapil Bhawan, Kathgodam.
30. Sri Kunwar Singh Nayal, S/o Shri C.S. Nayal, R/o New Awas Vikas, M.I.T.I., Kathogodam, Distt. Nainital.
31. Sri Pravin Kaushik, S/o Shri S.N. Sharma, R/o Kaladungi Road, P.O. Haldwani Distt. Nainital.
32. Sri Naem Khan, S/o Sri Hasan Raza Khan, R/o Railway Colony, Ward No. 6, P.O. Bazpur, Distt. Udham Singh Nagar.
33. Sri Azeem Khan, S/o Sri H.R. Khan, R/o Ward No. 6, Mundia Pistaur, Post Bazpur, Distt. Udham Singh Nagar.
34. Sri Praveen Kumar Dikshit, S/o Sri D.D. Dikshit, R/o Shyampuram Colony, P.O. Kashipur, Distt. Udham Singh Nagar.
35. Sri Sachin Sharma, S/o Sri S.R. Nadig, R/o Awas Vikas, P.O. Kashipur, Distt. Udham Singh Nagar.
36. Sri Jainendra Kumar Sharma, S/o Sri R.K. Sharma, R/o Ganj Main Bazar, P.O. Kashipur, Distt. Udham Singh Nagar.
37. Sri Shafiq Ahmad Khan, S/o Sri A.A. Khan, R/o Ward No.6, Mundia Pistaur, P.O. Bazpur, Distt. Udham Singh Nagar.
38. Sri Naresh Kumar, S/o Sri Motiram, R/o Indira Colony, Post Rudrapur (Udham Singh Nagar).
39. Sri Mukesh Kumar Sharma, S/o late C.B. Sharma, R/o Bhawaniganj, P.O. Ramnagar, Distt. Nainital.
40. Sri Bhukan Lal, S/o Sri Ram Kumar, R/o Mohd. Aujhan, P.O. Kashipur, Distt. Udham Singh Nagar.

41. Sri Nazim Ali, S/o Kadar Ali, R/o Mohd. Hazi, P.O. Kathgodam, Distt. Nainital.
42. Smt. Parvati Sharma, W/o Sri B.B. Sharma, R/o Dhar Bithauria No. 1, Post Haldwani, Distt. Nainital.
43. Sri Rajesh Mohan Sharma, S/o Sri B.B. Sharma, R/o Bithauria No. 1, Post Haldwani, Distt. Nainital.
44. Sri Puran Chand Pandey, S/o Sri P.N. Pandey, R/o Sharda Factory, Post Kathgodam, Distt. Udham Singh Nagar.
45. Sri Pushkar Kumar Bhatt, S/o Sri G.C. Bhatt, R/o Nawabi Road, Post Haldwani, Distt. Nainital.
46. Sri Rajesh Kumar Bhatt, S/o Sri L.D. Bhatt, R/o Bhatt Colony, Nawabi Road, Post Haldwani.
47. Sri Ganesh Chand Bhatt, S/o Sri L.D. Bhatt, R/o Bhatt Colony, Nawabi Road, Post Haldwani, Distt. Nainital.
48. Sri Ranjeet Singh Bisht, S/o Sri T.S. Bisht, R/o Alaknanda Colony, Talli, Post Haldwani, Distt. Nainital.
49. Sri Diwan Singh Fartyal, S/o Deo Singh, R/o Shanti Nagar, Bhotia Parao, Post Haldwani, Distt. Nainital.
50. Sri Jitendra Kumar Bhatt, S/o Kaushal Mani, R/o Teacher Colony, P.O. Kashipur, Distt. Udham Singh Nagar.
51. Sri Girish Chand Tiwari, S/o Sri K.B. Tewari, R/o Qila Bazar, Ganje Baba Chowk, Post Kashipur, Distt. Udham Singh Nagar.
52. Sri Mahesh Chand Bhatt, S/o Sri D.D. Bhatt, R/o Malla Gorakhpur, Post-Haldwani, Distt. Nainital.
53. Smt. Nazma Begum, W/o Sri Husnuddin, R/o Keshav Nagar, Post Bajpur, Distt. Udham Singh Nagar.
54. Sri Sanjay Bisht, S/o Sri J.S. Bisht, R/o Caltex, Post Kathgodam, Distt. Nainital.
55. Sri Devi Datt Joshi, S/o Sri S.M. Joshi, R/o Mundia Pishtor, Post Bajpur, Distt. Udham Singh Nagar.

56. Sri Kailash Chand Pandey, S/o Sri B.D. Pandey, R/o Bithauria No. 1, Post Haldwani, District Nainital.

57. Sri Arvind Singh alias Jenish, S/o Sri Swarn Singh, R/o Lane No. 8, Rampur Road, Post Haldwani.

58. Smt. Vibha Tiwari, W/o Sri H.B. Tiwari, R/o Kaladungi Chauraha, Post Haldwani.

59. Sri Charan Dutt Bhatt, S/o Sri K.D. Bhatt, R/o Malla Gorakhpur, Behind State Bank, Post Haldwani, Distt. Nainital. .....Respondents.

Mr. D.K. Aggarwal, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated: 10.04.2006

Hon'ble Rajesh Tandon, J.

Heard Sri D.K. Agarwal, Advocate for the petitioner and Standing Counsel for the respondents no. 1 and 2. Both the parties have agreed that let the matter be disposed of at the admission stage.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 24.03.2006 passed by the Chairman, State Transport Appellate Tribunal, Dehradun as contained in Annexure No.4 to the writ petition.

Briefly stated, that in respect of a route known as Haldwani-Kaladungi-Bazpur-Doraha-Kashipur which is a regular way established by the R.T.A., the petitioner has claimed to be the existing operator on the basis of valid regular stage carriage permit no. 1009-K on the aforesaid route. The sole contention of the petitioner is that in the meeting of the R.T.A. held on 16.12.2004 at Haldwani presided over by the Commissioner, Kumaon Division, Sri Rakesh Sharma, there was Mr. T.R. Bhatt, a non-member outsider, who was sitting next to the Chairman. The said outsider actively participated in

the deliberations of the R.T.A. and thereby influenced the orders of the R.T.A. to the extent that the official and non-official members were not allowed to open their mouth. By his presence, the objections were raised by the petitioner and other participants according to the case of the petitioner, the petitioner aggrieved by the said order dated 29.07.2003 passed by the R.T.A. Kumaon, a Revision was preferred being Revision No. 6 of 2003 before the State Transport Appellate Tribunal, Dehradun. In the memo of revision, the petitioner has already challenged that Sri T.R. Bhatt an outsider was sitting next to the Chairman and his activities have influenced the Commissioner Kumaon Division., Since this fact has already been mentioned in the grounds as well as in the memo of revision, the application dated 21st March, 2006 for impleading Sri T.R. Bhatt as a party is not required and as such the order dated 24th March, 2006 by which the application has been rejected needs no interference under Article 226/227 of the Constitution of India.

While rejecting the application, the appellate Authority has rightly mentioned that the impugned order dated 29.07.2003 is challenged in revision and the Court has to decide as to whether, the order dated 29.07.2003 requires any interference by the revisional authority or not and as such the impleadment of any of the parties will not affect the position regarding as to whether the meeting was validly held or not.

Counsel for the petitioner in support of his arguments has referred Section 68 and Section 90 of the Motor Vehciles Act. The same are incorporated below:-

"68. *Transport Authorities.-(1) The State Government shall, by notification in the Official Gazette, constitute for the State A State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to*

exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority, the powers and functions conferred by or under this Chapter on such Authorities:

Provided that in the Union Territories, the Administrator may abstain from constituting any Regional Transport Authority.

(2) *A State Transport Authority or a Regional Transport Authority shall consist of a Chairman who has had judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law and in the case of a State Transport Authority, such other persons (whether officials or not), not being more than four and, in the case of a Regional Transport Authority, such other persons (whether officials or not), not being more than two, as the State Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed, or continue to be, a member of a State or Regional Transport Authority, and, if any person being member of any such Authority acquires a financial interest in any transport undertaking, he shall within four weeks of so doing, given notice in writing to the State Government.*

Provided that nothing in this sub-section shall prevent any of the members of the State Transport Authority or a Regional Transport Authority, as the case may be, to preside over a meeting of such Authority during thue absence of the Chairman, notwithstanding that such member does not possess judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority

competent to pass any order or take any decision under any law:

Provided further that the State Government may.-

(i) where it considers necessary or expedient so to do, constitute the State Transport Authority or a Regional Transport Authority for any region so as to consist of only one member who shall be an official with judicial experience or experience as an appellate or a revisional authority or as and adjudicating authority competent to pass any order or take any decision under any law:

(ii) by rules made in this behalf, provide for the transaction of business of such authority in the absence of the Chairman or any other member and specify the circumstances under which, and the manner in which, such business could be so transacted:

Provided also that nothing in this sub-section shall be construed as debarring an official (other than an official connected directly with the management or operation of a transport undertaking) from being appointed or continuing as a member of any such authority merely by reason of the fact that the Government employing the official has, or acquires, any financial interest in a transport undertaking.

(3) The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued under section 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge through out the State the following powers and functions, namely:-

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional transport Authority where there is no such authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities;

[(ca) Government to formulate routes for plying stage carriages; and]

(d) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority, and the Regional Transport shall, in the discharge of its functions under this Act, give effect to and be guided by such directions.

(5) The State Transport Authority and any Regional Transport Authority, if authorized in this behalf by rules made under section 96, may delegate such of its powers and functions to such authority or person subject to such restrictions, limitations and conditions as may be prescribed by the said rules."

Similarly Section 90, which is a revisional Section provides as under:-

"90. Revision.- *The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate tribunal that the order made by the State Transport*

Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days form the date of the order :

Provided further that the State Transport Tribunal may entertain the application after the expiry of the said period of thirty days, it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

In ***Savitri Devi Vs. District Judge, Gorakhpur and others (1999) 2 SCC 577,*** the apex Court has held that there was no necessity of impleading the judicial officer, who disposed of the matter in the writ petition as it would cause unnecessary disturbance to the function of the Judicial Officer concerned and therefore, the practice of impleading the judicial officer has been deprecated.

Counsel for the petitioner on the other hand has submitted that he has a right to implead Sri T.R. Bhatt while filing the revision U/s 90 to the Motor Vehicles Act, 1988. A perusal of the memo of revision shows that the petitioner has already impleaded respondent no. 1 Regional Transport Authority Kumaon against which the revision has been preferred and as such whether it was a duly constituted committee or not will be available to the petitioner while

making the revision and therefore, it will not be necessary for the petitioner to implead Sri T.R. Bhatt by name. Section 68 Reads as under:-

There is nothing under either Section 68 or Section 90 being necessary that the party against whom the revision has been preferred, should be made a party while deciding the case.

Petitioner has preferred ***Santosh Kumar Vs. R.T.A. AIR 1985 Rajasthan page 130,*** where it has been observed by the Rajasthan High Court that the order made by the State Road Transport Authority or Regional Transport Authority can be challenged and the person aggrieved by an order can challenge the said order and according to the 3rd proviso a duty or obligation on the part of the tribunal is to give anybody a reasonable opportunity of being heard. Relevant observations are quoted below:-

"12. *The above provision empowers the tribunal either suo motu or on an application made to it, to pass any order as it deems fit, if it finds, that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal after calling for the record of the case. The first proviso prescribes a period of limitation that no application shall be entertained from a person aggrieved by an order of the State Transport Authority or Regional Transport Authority unless the application is made within a period of thirty days from the date of the order. It would appear from the first proviso that an application under S. 64A can be made by a person aggrieved by an order of the Regional Transport Authority. But the third proviso lays down a duty or obligation on the part of the tribunal and it is couched in negative and prohibitory language, which makes the provision imperative. It is mandatory for the tribunal to*

give to any person a reasonable opportunity of being heard, in case it passes an order, which may be prejudicial to that person, that is, the third proviso prohibits the tribunal to pass an order under S. 64A prejudicial to any person without giving him a reasonable opportunity of being heard."

From the perusal of the observations of the Rajasthan High Court it is fully established that the emphasis has been given upon the reasonable opportunity of being heard to that person, if the order is passed.

Admittedly, the person, who is prejudicial in the present case will be the person, whose permits have been affected if such an order is set aside by the revisional authority before whom the order has been challenged in respect of the meeting dated 29.07.2003. If the order is quashed naturally, the person affected will be whose permits have been cancelled and therefore, it is necessary to hear those persons on the principles of natural justice and also on the principles of that no one should be left unheard.

A perusal of the memo of revision shows that the petitioner has already impleaded Mohd. Shakir, Mohd. Rahman, whose permits are going to be affected and therefore, there will be no further requirement to implead any other person as a necessary party.

Of course it will be open for the revisional Court to enter into the controversy as to whether the meeting dated 29.07.2003 was biased or independent meeting while deciding the case.

Subject to the aforesaid observations, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

10.04.2006
Rathour